

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4032 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? NO

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? : NO
NO

BHARATKUMAR CHIMANLAL CHAUHAN

Versus

NUCLEAR POWER CORPORATION LTD.

Appearance:

MR MS RAO for Petitioner

MR JD AJMERA for Respondent No. 1

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 06/10/1999

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. J.D.
Ajmera for respondent No.1.

Draft amendment allowed. Heard learned counsel

for the parties. The petitioner challenges non-consideration of his case for promotion firstly in 1994 from Grade 'C' to Grade 'D', to which grade he was promoted later on in May 1995 and thereafter, for next promotion to the Grade 'E' from Grade 'D' after completion of 3 years in Grade 'D' notwithstanding persons junior to him were called and considered for the promotion.

2. In reply, respondents have urged that the respondent organization which was originally a constituent unit of Department of Atomic Energy, Government of India, was looking after design, construction, erection, commissioning, operation and maintenance of nuclear power plants in India for the purpose of generation of electricity by using atomic fuel and was later on converted into a company wholly owned by Government of India. The petitioner is a member of its scientific and technical cadre. For the purpose of uniform pattern of promotion in all the departments of atomic energy in scientific and technical cadre with an object to develop a cadre of highly competent and capable scientific and technical personnel who can operate and maintain hightech oriented frontier technology based on nuclear power station efficiently and economically, promotions are made purely to nurture the meritorious from one grade to next higher grade as per guidelines promulgated by DAE on the basis of performance, potentialities, knowledge, capabilities, highest order of commitment, devotion to duty, with perfection in examination of an assignment / job as the focus area of development and work of the individual technical personnel. In order to achieve these objectives, the process devised is that, in the first instance, the screening committee examines the Annual Character Reports [ACRs] of number of persons in order of seniority. Firstly, a candidate who has 3 years service in the cadre and received outstanding grade in Annual Character Rolls [ACRs] is recommended for taking trade test and personal interview for further adjudging the merit. Whereas a person who does not have consistent outstanding grading for 3 years, is not so considered for further grading on merits on completion of 3 years, but he has to wait. If a candidate who does not have 3 years outstanding grading, but has four years of consistent 'very good' grading, he is considered for further examination on merit on completion of 4 years service in the grade. Like wise, a candidate who does not have 4 years consistent 'very good' grading has to wait for still longer period and the person who has a composition of good and very good in five successive years become

eligible for such consideration on completion of 5 years service in the grade and those who do not fulfill any of the above three criteria becomes eligible for consideration of their merit on securing 6 years good consistent grading.

3. The petitioner, in the first instance, had not consistent 'outstanding' grading but had 'very good' grading and therefore, he was considered for promotion on completion of 4 years service as Tradesman 'C' grade in 1995 and was promoted to the next higher grade of Tradesman Grade 'D' in May 1995. For the same reason, for further promotion from Tradesman 'D' grade to Tradesman 'E' grade, the petitioner was not considered in 1998 on completion of mere 3 years service, because he was not having the consistent 'outstanding' grading in his ACRs for the 3 years period which he spent as Tradesman 'D' Grade and for the same reason, he having not fulfilled above criteria, he was not considered for taking Trades Test and subjected to personal interview in June 1999 as well.

4. The petitioner, in response to this reply, sought amendment of the petition which was allowed by challenging the validity of policy of merit alone as criteria for promotion on the ground of its being violative of Article 14 and 16 of the Constitution. It was contended that the criteria of only 'outstanding' grading for the purpose of promotion is based on subjective satisfaction of the officer itself and being open to abuse does not lay down a valid criteria for promotion on the basis of merit alone.

5. Having considered the rival contentions, I am of the view that challenge to the constitutional validity of the policy must fail. Undoubtedly seniority in ordinary circumstance play a vital role in promotional exercise of an employee in any organisation. However, it cannot be said that, in all circumstances, the seniority of an incumbent plays the same important role in all services. What is ordinarily required may be departed in the cases of specific requirement. It cannot be doubted that erection, commissioning operations of nuclear power plants required highest quality of scientific and technical efficiency not only in knowledge, but in precise use of the technical and scientific knowledge in operation, maintenance and operation of the nuclear plants. In a venture of this nature, the requirement of highly efficient, technical staff cannot be undermined and promotional growth in the organisation if depends purely on merits, it cannot be faulted on the ground that

it ignores the number of years in service as foundational criterion in promotional exercise. It cannot also be doubted that ACRs are based on subjective satisfaction of the person who watch the performance of subordinates in their operational activities notwithstanding that, in the absence of malafide exercise of that duty to fill ACRs cannot be impinched solely on the ground of it being founded on subjective satisfaction, because it is in very nature of things so. It only provides one of the criterions for the purpose of adjudging the suitability of the candidate. In the context of adjudging the merit of the candidate where the promotion is based solely on merit, the grading of overall performance of a candidate in all sphere of his employment activity, do play a role in adjudging and competing merits where the promotions, as in the present case, are devised. In the field of scientific and technical knowledge and efficiency, the reference to the ACRs to find the consistency of a candidate in the level of his performance as a consideration to fix the period at which a scientific and technical personnel may reach the promotional ladder, plays a vital role. The very fact that consistency in performance levels has been made a criterion for laying down pace at which the performers are likely to reach the next echelon. The consistent outstanding performer has been given edge over the 'very good' performance and consistently 'very good' performer has an edge over a consistent good, likewise, a composite performer of 'very good' and 'good' level has been given an edge over merely consistent good performer by devising different pace at which he reaches his promotional goal. Such a criterion for providing a different pace for reaching promotional destination for super performers and lesser performers cannot be said to be arbitrary unjust or unreasonable in the context of the demand of level of efficiency in the organisation for generating atomic and nuclear energy.

10. I am therefore unable to hold that merely because the promotional avenues are open to the incumbents of the scientific and technical staff of the respondent organisation on the basis of merit alone is violative of Article 14 and 16 of the Constitution of India or results in denying equal opportunity in the matters of employment at all levels in the organisation. In my opinion, it rationalizes the growth of persons of different potentiality of the person by considering them at a different point of time by not denying consideration to have altogether. Merely accelerating the pace of promotional avenues in case of more superior consistent performers, than not so superior performers cannot be said to be unreasonable or arbitrary criterion in

operating the merit criterion for selecting the best candidates for scientific and technical staff of the Department of Atomic Energy.

11. The fact that because of the subjective nature of decision making is likely to be abused cannot be a ground for denouncing the policy itself. In such cases, if any case is made out for the abuse of the powers or if it is shown that the gradation has been given to the incumbent for extraneous consideration without any objective material or out of malice or biased, such exercise of power can be challenged and struck down, if it is so established. However, that would entail inquiry into facts and circumstances of each case to find whether an abuse of exercise of power in grading an incumbent in ACRs is made out or not.

12. Ordinarily, challenge to such subjective satisfaction as are expressed in ACRs are not entertainable to except only on the ground of malafide or if there is any adverse reports find place in the ACRs on the ground that they are not founded on the existing materials, but not solely on the ground of being subjective in nature. For that, it is incumbent for the petitioner who challenges such grant of gradation in ACRs to specifically plead the grounds of apprehended malafide exercise of powers by the authority and if that is so, the officer has to be impleaded as a party in person against whom such charges of malafide are levelled so that he can file the reply to the same. However, no such allegations of exercise of malafides by person writing the ACRs have been made in the petition. A bald assertion because the petitioner has taken recourse of filing a complaint before the Commissioner of SC/ST has resulted in formation of biased in the organisation against the petitioner, cannot be accepted as a case of malafide or bias against the petitioner. If that were so, then every matter of litigation would brand any organisation or officer with a tag of malafide disposition towards litigant. That, in my opinion, cannot be sustained.

13. As a result, this petition fails and is hereby dismissed. Rule discharged.

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